

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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In the Matter of the Revision to Remove
Obsolete Provisions in *Minnesota Rules*,
Chapters 7810, 7820, 7825, 7827, 7829, 7849,
7851, 7853 and 7855

ISSUE DATE: December 19, 2001

PUC DOCKET NO. U-999/R-00-1661

STATEMENT OF NEED AND
REASONABLENESS

I. INTRODUCTION AND STATEMENT OF NEED

The Minnesota Public Utilities Commission proposes to amend its rules to eliminate certain obsolete rule provisions. **This rulemaking is needed to fulfill the Commission's obligations under Minnesota Statutes § 14.05, subd. 5.** That statute directs each Minnesota agency to file an Obsolete Rules Report each year, identifying obsolete rules and establishing a plan for eliminating them.

II. STATEMENT OF REASONABLENESS AND STATUTORY AUTHORITY

The Commission has authority to amend and repeal its rules pursuant to *Minnesota Statutes* §§ 216A.05, 216B.08, 216B.09, 237.10, 237.16 and 237.74.

The Commission's proposed changes to its rules are reasonable. The Commission bases this conclusion on the merits of the policies underlying the proposed rules, and on the process by which the changes have been developed.

A. Policies

The proposed amendments, and the rationales supporting them, are set forth in detail below. Here is a summary:

- The Commission repealed Minn. Rules chapter 7830 (Practice and Procedure) when it adopted chapter 7829, but many Commission rules retain references to chapter 7830.
- Minn. Rules part 7810.3400, subp. 2, addresses eight-party local telephone service. This rule is obsolete because multi-party service has been virtually eliminated by Minnesota Statutes § 237.068 and Commission orders implementing that section.
- Minnesota Statutes § 237.5799 contained sunset clauses for §§ 237.58; 237.60, subd. 1, 2 and 5; 237.62; and 237.625. Sections 237.58 and 237.62 pertained to noncompetitive telecommunications services. Section 237.625 pertained to incentive regulation for telephone companies. And section 237.60, subd. 2, pertained to emerging telephone competition. The expiration of these statutes also rescinded the Commission's authority for a number of rules.

- Minn. Rules chapter 7827 provides transition rules occasioned by the federal Tax Reform Act of 1986. This chapter is now unnecessary because adjustments for the Tax Reform Act are now fully implemented.
- The Revisor of Statutes changed the codification of Minn. Stat. § 216B.2421, warranting a corresponding change to the citations in Minn. Rules 7849.0010.
- A number of rules refer to large oil facilities and oil refineries. The Legislature removed these entities from Commission jurisdiction when it changed the definition of “large energy facility” at *Minnesota Statutes* § 216B.2421, subd. 2.
- The Commission repealed Minn. Rules chapter 7847 (Large Energy Facilities), but some Commission rules retain references to that chapter.
- The Revisor of Statutes has identified various changes to improve or simplify the language of the Commission’s rules without altering their substance.

For the foregoing reasons, aspects of the Commission’s rules are obsolete or otherwise warrant revision.

B. Process

On December 26, 2000, the *State Register* published the Commission's Request for Comments, initiating this docket. The Commission received only one comment, from the Office of Attorney General's Residential and Small Business Utilities Division (OAG-RUD). OAG-RUD argued that rules governing telephone metering should be retained.

On November 20, 2001, after giving notice to all entities on its rulemaking lists, the Commission convened a public hearing on whether to proceed to publish a Notice of Intent to Amend Rules to eliminate obsolete rule provisions and make conforming changes. After providing opportunity for comment, the Commission unanimously approved proceeding in this matter. (The changes approved by the Commission did not include the changes objected to by the OAG-RUD.)

On November 28, 2001, the Commission issued its 2001 Obsolete Rules Report, identifying the rules it had approved for revision on November 20 and reporting that the current rulemaking was underway.

Thus, on multiple occasions the Commission has stated its intent to pursue the amendment of these rules, and has provided opportunity for comment. This process lends support to the view that these amendments are reasonable.

III. ANALYSIS OF INDIVIDUAL RULES

Relevant excerpts from the Commission’s rules are set forth below in *italics*, with proposed changes **shaded**. Proposed deletions are ~~stricken~~ and proposed additions are underlined.

A. 7810 references to Chapter 7830

7810.2500 ESCROW PAYMENTS.

To submit a payment in escrow, the customer ~~must~~ shall make payment of the amount due as shown on the bill through an escrow payment form clearly marked and provided by the utility. The escrow payment form must provide space for the customer to explain why the utility's resolution of the dispute is unsatisfactory to the customer. The form must be in three copies, one of which will be retained by the customer. A copy of the escrow payment form must be forwarded by the customer to the Public Utilities Commission. By submitting the escrow payment form to the commission, the customer ~~shall be~~ is deemed to have filed an informal complaint against the utility, pursuant to the commission's rules of practice, parts ~~7830.0100 to 7830.4300~~ 7829.0100 to 7829.3200. Any escrow payment to the utility may be applied by the utility as any normal payment received by the utility. After escrow payment has been made, the customer and the utility may still resolve the dispute to their mutual satisfaction.

Upon settlement of the dispute, any sums to which the customer is found to be entitled ~~to must~~ be refunded to the customer ~~shall and must~~ be supplemented by a six percent per annum interest charge from the date of payment to the date of return by the utility.

The Commission repealed Minn. Rules chapter 7830 (Practice and Procedure) when it adopted chapter 7829, but this rule retains a reference to chapter 7830. The proposed changes above would eliminate references to chapter 7830 and replace them with the analogous references in chapter 7829.

In addition, the Revisor proposed other changes to simplify the rule's language and conform it to the Revisor's contemporary drafting style. These changes are not designed to have any substantive effect.

B. Eight-party telephone service

7810.3400 GRADE OF SERVICE.

Subpart 1. Number of customers on line limited by grade of service. Within the base rate area no utility shall connect more customers on any line than are contemplated under the grade of service charged the customer on such line, except on an emergency and temporary basis authorized by the commission.

~~Subp. 2. Rural customers. On rural lines where multiparty service is provided, no more than eight customers shall be connected to any one circuit, unless approved by the commission. All rural circuits now serving more than eight shall be changed to meet this requirement within a five-year period following adoption of these rules. The telephone utility may regroup customers in such a manner as may be necessary to carry out the provision of this part. Upon completion of delay in the meeting of this requirement a report to that effect shall be filed with the commission. The commission shall recognize that there are certain sparsely populated areas within our state where these standards could prove unreasonable.~~

Minn. Rules part 7810.3400, subp. 2, addresses eight-party local telephone service. This rule is obsolete because multi-party service has been virtually eliminated by Minnesota Statutes § 237.068 and Commission orders implementing that section.¹ The proposed language change would eliminate this rule part.

C. 7810.8100 Changes for Expired Statutes

7810.8100 PURPOSE.

The purpose of parts 7810.8100 to ~~7810.8940~~ 7810.8815 is to describe the filing requirements for telephone companies under the jurisdiction of the commission for:

A. tariffs, price lists, and new service offerings under Minnesota Statutes, sections 237.06 and 237.07;

B. rate changes including general rate changes under Minnesota Statutes, section 237.075; and

~~C. miscellaneous tariff changes under Minnesota Statutes, section 237.63; and emerging competitive service rate changes proposed under Minnesota Statutes, section 237.60;~~

~~C. competitive services under Minnesota Statutes, sections 237.59, 237.60, and 237.62; and~~

~~D. incentive plans under Minnesota Statutes, section 237.625.~~

Minnesota Statutes § 237.5799 contained sunset clauses for §§ 237.58; 237.60, subd. 1, 2 and 5; 237.62; and 237.625.² All these statutes expired on August 1, 1999, along with the Commission's authority for a number of its rules.

¹See, for example, *In the Matter of Vista Telephone Company of Minnesota's Four-Party Upgrade Plan*, Docket No. P-405/M-91-609 ORDER APPROVING PLAN AND REQUIRING PROGRESS REPORTS (December 9, 1991); *In the Matter of Peoples Telephone Company's Four-Party Upgrade Plan*, Docket No. P-554/M-91-806 ORDER APPROVING PLAN AND REQUIRING FURTHER FILINGS (December 26, 1991); *In the Matter of a Commission Initiated Investigation into the Public Interest Implications of Eliminating Two-Party Service in Minnesota*, Docket No. P-999/CI-94-430 ORDER REQUIRING ELIMINATION OF TWO-PARTY SERVICE (December 30, 1994).

²Minn. Stat. § 237.5799 (1998) contained a list of statutes to expire on August 1, 1999. But in 1999 the Legislature amended § 237.5799. Laws 1999 chapter 224 (S.F. No. 685) § 6 states:

Minnesota Statutes 1998, section 237.5799, is amended to read:

237.5799 [EXPIRATION OF COMPETITIVE SERVICE LAWS.]

Sections 237.58, ~~237.59~~, 237.60, subdivisions 1, 2, and 5, ~~237.61~~, 237.62, and 237.625, ~~237.63, 237.64, 237.65, and 237.68~~ expire on August 1, 1999.

The amended version of § 237.5799 does not appear in Minnesota Statutes (2000) because § 237.5799 itself became obsolete after August 1, 1999.

As a result of the amendment, Minn. Stat. §§ 237.59; 237.60, subd. 3 and 4; 237.61, 237.63, 237.64, 237.65 and 237.68 remain in force – along with the rules implementing those statutes.

Specifically, sections 237.58 and 237.62 pertained to noncompetitive telecommunications services. Section 237.625 pertained to incentive regulation for telephone companies. And section 237.60, subd. 1, 2, and 5, pertained to emerging telephone competition. The proposed changes would eliminate the references to these statutes and topics.

In particular, Minnesota Rules parts 7810.8900 to 7810.8940 pertain to implementing §§ 237.58 and 237.625. With the proposed elimination of these rules (see below), references to 7810.8940 would become obsolete and should be replaced with references to the last remaining part of Chapter 7810, which is 7810.8815.

D. 7810.8200 Changes for Expired Statutes

7810.8200 DEFINITIONS.

Subpart 1. Scope. The terms used in parts 7810.8100 to ~~7810.8940~~ 7810.8815 have the meanings given them in this part.

* * *

Subp. 17. Language change. "Language change" means a miscellaneous tariff change under Minnesota Statutes, section 237.63, subdivision 2, ~~or a price list change under Minnesota Statutes, section 237.60, paragraph (c),~~ that changes the language describing the rate, price, term, or condition of a service that does not substantially alter the application of the tariff or price list.

Minnesota Statutes §§ 237.58 and 237.60, subp. 2 have expired, along with the Commission's authority for a number of its rules. The above changes would eliminate any references to these statutes.³

In particular, Minnesota Rules parts 7810.8900 to 7810.8940 pertain to implementing §§ 237.58 and 237.625. With the proposed elimination of these rules (see below), references to 7810.8940 would become obsolete and should be replaced with references to the last remaining part of Chapter 7810, which is 7810.8815.

E. 7810.8300 Changes for Expired Statutes

7810.8300 SCOPE.

Parts 7810.8100 to ~~7810.8940~~ 7810.8815 apply to telephone companies regulated by the commission under Minnesota Statutes, chapters 216, 216A, and 237, and their regulated services.

Minnesota Statutes §§ 237.58 and 237.625 have expired, along with the Commission's authority for Minnesota Rules part 7810.8900 to 7810.8940. With the proposed elimination of these rules (see below), references to 7810.8940 would become obsolete and should be replaced with references to the last remaining part of Chapter 7810, which is 7810.8815.

³The rule's reference to "section 237.60, paragraph (c)" is a reference to § 237.60, subd. 2(c). Subdivision 2 was the only subdivision in § 237.60 to have lettered paragraphs. See Minn. Stat. § 237.60 (1998).

F. 7810.8400 Changes for Expired Statutes

7810.8400 TARIFFS AND PRICE LISTS.

* * *

Subp. 5. Tariffs and price lists no longer in effect. Tariffs and price lists remain in effect until superseded by tariffs and price lists subsequently filed, canceled, or withdrawn under the procedures in parts 7810.8100 to ~~7810.8940~~ 7810.8815 or as ordered by the commission.

Minnesota Statutes §§ 237.58 and 237.625 have expired, along with the Commission's authority for Minnesota Rules part 7810.8900 to 7810.8940. With the proposed elimination of these rules (see below), references to 7810.8940 would become obsolete and should be replaced with references to the last remaining part of Chapter 7810, which is 7810.8815.

G. 7810.8500 Changes for Expired Statutes

7810.8500 NEW SERVICE OFFERINGS.

A telephone company shall file the following information with the department and the commission for each new service offering. The information must:

A. identify and describe separately each new telephone service and state separately the rates applicable to each;

B. include any new or revised ~~pages~~ page to the tariff book or price list, ~~be~~ in a format consistent with the currently filed tariff or price list, and, if a revised page ~~must~~, contain the revision number and the page number it is revising;

C. include information explaining the estimated impact on the company's revenues and expenses for noncompetitive services as a result of the new service offering; and

D. include an incremental cost-of-service study, ~~or if allowed pursuant to Minnesota Statutes, section 237.60, subdivision 2, paragraph (h), a variable cost study, demonstrating that the rate for each new emerging competitive service offering is above incremental cost~~ or, if allowed, variable cost.

Minnesota Statutes § 237.60, subd. 2, pertaining to emerging competition and variable cost studies, has expired. The proposed language change above would eliminate reference to that statute and topic.

In addition, the Revisor proposed other changes to simplify the rule's language and conform it to the Revisor's contemporary drafting style. These changes are not designed to have any substantive effect.

H. 7810.8625 Changes for Expired Statutes

7810.8625 RATE BASE SCHEDULES.

* * *

~~*Subp. 5. Competitive and noncompetitive services. If a telephone company notifies the commission in writing under Minnesota Statutes, section 237.58, subdivision 1, of its decision to be subject to Minnesota Statutes, section 237.62, a general rate change notice must include a schedule that demonstrates the calculation of the rate base used by the company to calculate its revenue requirement according to Minnesota Statutes, section 237.62, subdivision 1 or 1a.*~~

Minnesota Statutes §§ 237.58 and 237.62 have expired, along with the Commission's authority for this rule.

I. 7810.8630 Changes for Expired Statutes

7810.8630 OPERATING INCOME SCHEDULES.

* * *

~~*Subp. 6. Competitive and noncompetitive services. If a telephone company notifies the commission in writing under Minnesota Statutes, section 237.58, subdivision 1, of its decision to be subject to Minnesota Statutes, section 237.62, a general rate change notice shall include a schedule that demonstrates the operating income used by the company to calculate its revenue requirement according to Minnesota Statutes, section 237.62, subdivision 1 or 1a.*~~

Minnesota Statutes §§ 237.58 and 237.62 have expired, along with the Commission's authority for this rule.

J. 7810.8635 Changes for Expired Statutes

7810.8635 SUPPLEMENTAL FINANCIAL INFORMATION.

* * *

Subp. 2. Workpapers. The company shall file workpapers that show how the test year rate base and income statement components and adjustments have been determined. The workpapers must include:

A. supporting data and calculations showing the development of the unadjusted jurisdictional test year amounts for the rate base and operating income statement; and

B. supporting data and calculations showing the development of each test year adjustment and the proposed jurisdictional test year amounts for the rate base and operating income statement;

~~*C. supporting calculations showing the development of the revenue requirement under Minnesota Statutes, section 237.62, subdivision 1 or 1a, including a detailed description of the methods used to prepare cost studies, to separate costs, and to make the appropriate allocations.*~~

The workpapers described in items ~~A to C~~ and B must be filed with the commission, the department, and the attorney general's office, in quantities established by the agencies, and supplied to other parties on request.

Minnesota Statutes § 237.62 has expired. The proposed language change above would eliminate reference to that statute, and make conforming changes.

K. 7810.8650 Changes for Expired Statutes

7810.8650 ADDITIONAL INFORMATION.

Subpart 1. General requirement. The additional information described in subparts 2 and 3 must be filed with each general rate change notice.

Subp. 2. Information as ordered. The company shall file information required by the commission's most recent general rate change or other applicable orders for that company.

Subp. 3. Additional information. On or after review of a telephone company's notice

of a change in rates or tariff and within a reasonable time as it may determine, the commission may require a company to provide additional information to supplement the information required by parts 7810.8610 to 7810.8650. A telephone company may include in its filing additional information not required by parts 7810.8100 to ~~7810.8940~~ 7810.8815.

Minnesota Statutes §§ 237.58 and 237.625 have expired, along with the Commission's authority for Minnesota Rules part 7810.8900 to 7810.8940. With the proposed elimination of these rules (see below), references to 7810.8940 would become obsolete and should be replaced with references to the last remaining part of Chapter 7810, which is 7810.8815.

L. 7810.8740 - .8755 Changes for Expired Statutes

~~7810.8740 RATE INCREASE OR DECREASE.~~

~~In addition to the notice requirements in part 7810.8700, a notice for a rate increase under Minnesota Statutes, section 237.60, subdivision 2, paragraph (b), and a rate decrease under Minnesota Statutes, section 237.60, subdivision 2, paragraph (a), must include:~~

- ~~A. a statement concerning whether the proposed change is an increase or decrease;~~
- ~~B. an incremental cost-of-service study, or if allowed pursuant to Minnesota Statutes, section 237.60, subdivision 2, paragraph (h), a variable cost study, demonstrating that the proposed rate is above incremental cost or, if allowed, variable cost;~~
- ~~C. a copy of the notice to customers for a rate increase; and~~
- ~~D. the dollar and percentage change in total jurisdictional annual revenues resulting from the proposed price list change.~~

~~7810.8745 LANGUAGE CHANGE.~~

~~In addition to the notice requirements in part 7810.8700, a notice for a language change under Minnesota Statutes, section 237.60, subdivision 2, paragraph (c), must include an explanation on why the proposed change does not substantially alter the application of the price list.~~

~~7810.8750 SUBSTANTIAL CHANGE IN APPLICATION OF PRICE LIST.~~

~~In addition to the notice requirements in part 7810.8700, a notice for a substantial change in application of price list under Minnesota Statutes, section 237.60, subdivision 2, paragraph (d), must include:~~

- ~~A. information demonstrating that the application of the price list is substantially changed but that the rate is not changed; and~~
- ~~B. the dollar and percentage change in total jurisdictional annual revenues resulting from the proposed price list change.~~

~~7810.8755 NEW PRICING PLAN.~~

~~In addition to the notice requirements in part 7810.8700, a notice for a new pricing plan under Minnesota Statutes, section 237.60, subdivision 2, paragraph (e), must include:~~

- ~~A. an identification of the rate elements being combined;~~
- ~~B. an explanation of the change in the definition of the rate elements;~~
- ~~C. the increases and decreases in price for the rate elements;~~
- ~~D. the dollar and percentage change in total jurisdictional annual revenues resulting from the proposed price list change; and~~
- ~~E. an incremental cost-of-service study or, if allowed pursuant to Minnesota~~

~~Statutes, section 237.60, subdivision 2, paragraph (h), a variable cost study, demonstrating that the proposed pricing plan is above incremental cost or, if allowed, variable cost.~~

Minnesota Statutes § 237.60, subd. 2 has expired, along with the Commission's authority for these rules.

M. 7810.8800 Changes for Expired Statutes

~~7810.8800 ELECTION.~~

~~Subpart 1. Conditions for election. If a telephone company elects to have its services subject to regulation as competitive services, it must file with the commission a written notice of its decision under Minnesota Statutes, section 237.58.~~

~~Subp. 2. Notice requirements. A notice of election must be in letter form, addressed to the executive secretary of the commission, and must include a list of the services provided or to be provided by the telephone company as subject to competition together with the price lists used in providing the services. Revised tariff pages reflecting changes as a result of the classification as competitive services must be included in the notice. The price lists and tariff pages must conform to part 7810.8400.~~

~~Subp. 3. Service of notice. A copy of the notice of election must be served on the department and the attorney general's office.~~

Minnesota Statutes § 237.58 has expired, along with the Commission's authority for this rule.

N. 7810.8900 - .8940 Changes for Expired Statutes

~~7810.8900 REQUIREMENTS, GENERALLY.~~

~~Subpart 1. Petition for approval. A telephone company whose general revenue requirement is determined under Minnesota Statutes, section 237.075, and that elects to be subject to regulation under Minnesota Statutes, section 237.58, may file a petition with the commission for approval of an incentive plan under Minnesota Statutes, section 237.625.~~

~~Subp. 2. Scope. The filing requirements of this part and parts 7810.8905 to 7810.8940 are minimum requirements. A telephone company may file, and the commission may consider, additional information to determine whether to approve, reject, or change a proposed incentive plan and to determine whether the commission has substantial reason to believe that existing rates are inappropriate.~~

~~7810.8905 PETITION.~~

~~An incentive plan petition must include:~~

~~A. the legal name, address, and telephone number of the company and its designated contact person;~~

~~B. if the company will be represented by an attorney, the name, address, and telephone number of the attorney;~~

~~C. the date of the filing, which is the date the commission receives the company's filing or the date designated by the company, whichever is later;~~

~~D. the proposed effective date of the incentive plan;~~

~~E. the proposed duration of the incentive plan;~~

~~F. the signature and title of the company officer or representative authorizing the petition;~~

~~G. a brief narrative explaining why a general rate change proceeding is or is not~~

~~appropriate;~~

~~H. an explanation of whether and, if so, how the proposed incentive plan will benefit the company's customers;~~

~~I. an explanation of how the proposed incentive plan will allow the company to maintain or improve the quality of its service;~~

~~J. the proposed notice of the proposed incentive plan to the company's customers; and~~

~~K. the informational requirements in parts 7810.8910 to 7810.8940.~~

~~7810.8910 RATE BASE SCHEDULES.~~

~~Subpart 1. Comparison schedule. The incentive plan petition must include a schedule comparing the following jurisdictional amounts:~~

~~A. the rate base approved by the commission in the company's most recent general rate change proceeding; and~~

~~B. the corresponding rate base for the most recent fiscal year. The corresponding rate base must incorporate the applicable rate base adjustments and components allowed or required by the commission in the company's most recent general rate change proceeding.~~

~~Subp. 2. Explanation. An accompanying written explanation must cite each rate base issue determined by the commission in the most recent general rate change proceeding, where it appears in the commission's order, and the adjustment the company has made for each issue. If an adjustment is not made for an issue, the explanation must state the reason why an adjustment is not required.~~

~~The company shall explain significant changes in dollar amounts for the comparison schedule.~~

~~7810.8915 OPERATING INCOME STATEMENT.~~

~~The incentive plan petition must include a schedule comparing the following jurisdictional amounts:~~

~~A. the operating income statement approved by the commission in the company's most recent general rate change proceeding; and~~

~~B. the corresponding operating income statement for the most recent fiscal year. The corresponding operating income statement must incorporate the applicable operating income statement adjustments and components allowed or required by the commission in the company's most recent general rate change proceeding.~~

~~An accompanying written explanation must cite each operating income statement issue determined by the commission in the most recent general rate change proceeding, where it appears in the commission's order, and the adjustment the company has made for each issue. If an adjustment is not made for an issue, the explanation must state the reason why an adjustment is not required.~~

~~The company shall explain significant changes in dollar amounts for the comparison schedule.~~

~~7810.8920 RATE OF RETURN.~~

~~The incentive plan petition must include a schedule comparing the following amounts:~~

~~A. the rate of return approved by the commission in the company's most recent general rate change proceeding, including the capital structure, the cost of short-term debt, the cost of long-term debt, the cost of preferred stock, and the return on common equity;~~

~~B. the realized rate of return for the most recent fiscal year, including the capital~~

~~structure, the cost of short-term debt, the cost of long-term debt, the cost of preferred stock, and the realized return on common equity; and~~

~~C. the required rate of return for the most recent fiscal year, including the capital structure, the cost of short-term debt, the cost of long-term debt, the cost of preferred stock, and the required return on common equity. The company shall explain how it developed the required rate of return.~~

~~The company shall explain significant changes in dollar amounts and costs included in the comparison schedule.~~

~~7810.8925 REVENUE DEFICIENCY OR SURPLUS.~~

~~The incentive plan petition must include a schedule comparing the revenue deficiency or surplus amounts calculated by using the following:~~

~~A. the rate base, operating income statement, and rate of return approved by the commission in the company's most recent general rate change proceeding;~~

~~B. the corresponding rate base, operating income statement, and realized rate of return for the most recent fiscal year; and~~

~~C. the corresponding rate base, operating income statement, and required rate of return for the most recent fiscal year.~~

~~7810.8930 FINANCIAL MARKET SCHEDULE.~~

~~The incentive plan petition must include a schedule showing 12 months of prime interest rates, or 12 months of treasury bill rates, or other financial market indicators, during the following periods:~~

~~A. the test year used as the basis for determining the company's revenue requirements in the most recent general rate change proceeding; and~~

~~B. the company's most recent fiscal year.~~

~~7810.8935 OPERATING EFFICIENCY.~~

~~The incentive plan petition must include the following:~~

~~A. an explanation of how the proposed incentive plan will provide an incentive to the company to improve its operating efficiency;~~

~~B. a projection of which operations the company expects to become more efficient as a result of the proposed incentive plan; and~~

~~C. an explanation of why the operations identified in item B cannot be improved without the proposed incentive plan.~~

~~7810.8940 SHARED EARNINGS.~~

~~The incentive plan petition must include the terms and conditions of the company's proposal to share its increased earnings with its customers. The petition must also include:~~

~~A. an explanation of how increased earnings will be shared;~~

~~B. a statement showing whether increased earnings will be shared by giving customers credits against bills or by lowering rates;~~

~~C. an assessment of the risks borne by the company and those borne by its customers;~~

~~D. an explanation of how increased earnings will be measured by the company and periodically reported to the commission; and~~

~~E. a description of proposed pass-through of cost increases and decreases.~~

Minnesota Statutes §§ 237.58 and 237.625 have expired, along with the Commission's authority for these rules.

O. 7820 Reference to Chapter 7830

7820.2800 ESCROW PAYMENTS FOR DISPUTES.

To submit a payment in escrow, the customer ~~must~~ shall make payment of the amount due as shown on the bill through an escrow payment form, clearly marked and provided by the utility.

The escrow payment form must provide space for the customer to explain why the utility's resolution of the dispute is unsatisfactory to the customer. The form must be in three copies, one of which will be retained by the customer. A copy of the escrow payment form must be forwarded by the customer to the Public Utilities Commission. Any escrow payment to the utility may be applied by the utility as any normal payment received by the utility. After escrow payment has been made, the customer and the utility may still resolve the dispute to their mutual satisfaction.

By submitting the escrow payment form to the commission, the customer ~~shall be~~ is deemed to have filed an informal complaint against the utility, pursuant to the commission's rules of practice, parts ~~7830.0100 to 7830.4300~~ 7829.0100 to 7829.3200. Upon settlement of the dispute, any sum to which the customer is found to be entitled ~~to~~ must be refunded to the customer ~~shall and must~~ be supplemented by an eight percent per annum interest charge from the date of payment to the date of return by the utility.

The Commission repealed Minn. Rules chapter 7830 (Practice and Procedure) when it adopted chapter 7829, but many Commission rules retain references to chapter 7830. The proposed changes above would eliminate references to chapter 7830 and replace them with the analogous references in chapter 7829.

In addition, the Revisor proposed other changes to simplify the rule's language and conform it to the Revisor's contemporary drafting style. These changes are not designed to have any substantive effect.

P. 7825 Reference to Chapter 7830

7825.3400 PROCEDURES SUBSEQUENT TO NOTICE.

Any amended notice ~~shall~~ must be served at least 90 days prior to the proposed effective date of modified rates. If a notice or an amended notice is complete in all material respects as prescribed by parts 7825.3100 to 7825.4400, the commission shall follow the procedures outlined in the rules of practice, parts ~~7830.0100 to 7830.4300~~ 7829.0100 to 7829.3200. Upon acceptance of the notice and the determination that a hearing ~~shall~~ must be conducted, but before the proposed effective date of the modified ~~rated rate~~ schedules, the commission may, by written directive, explaining the reasons therefor, signed by the authority of the commission, and served upon the utility, suspend the operation of the utility's modified rate schedules but not for a longer period than 90 days beyond the time when the modified rates would otherwise go into effect unless the commission ~~shall find~~ finds that a longer time will be required, in which case the commission may further extend the period for not to exceed a total of nine months. Such directive ~~shall~~ must include authority for the utility to place suspended rates into effect,

subject to refund, provided that the bond and sureties or that the agreement to refund as specified in part 7825.3300 is approved by the commission.

The Commission repealed Minn. Rules chapter 7830 (Practice and Procedure) when it adopted chapter 7829, but many Commission rules retain references to chapter 7830. The proposed changes above would eliminate references to chapter 7830 and replace them with the analogous references in chapter 7829.

In addition, the Revisor proposed other changes to simplify the rule's language and conform it to the Revisor's contemporary drafting style. These changes are not designed to have any substantive effect.

Q. Tax Reform Act of 1986

~~7827.0100 DEFINITIONS.~~

~~Subpart 1. Scope. The terms used in this chapter have the meanings given them in this part.~~

~~Subp. 2. Commission. "Commission" means the Minnesota Public Utilities Commission.~~

~~Subp. 3. Department. "Department" means the Minnesota Department of Public Service.~~

~~Subp. 4. Public utility. "Public utility" has the meaning given it in Minnesota Statutes, section 216B.02, subdivision 4.~~

~~Subp. 5. Tax reform act. "Tax reform act" means the federal Tax Reform Act of 1986, Public Law Number 99-514.~~

~~Subp. 6. Telephone company. "Telephone company" has the meaning given it in Minnesota Statutes, section 237.01, subdivision 2, for telephone companies providing service to 15,000 or more subscribers.~~

~~7827.0200 PURPOSE.~~

~~The purpose of this chapter is to require telephone companies and public utilities to adjust rates for service within Minnesota to recognize the reduction in operating costs attributable to the reductions in federal corporate income taxes as a result of the tax reform act.~~

~~7827.0300 REASONABLE RATES.~~

~~On and after July 1, 1987, the overall rates of public utilities and telephone companies are found to be unjust and unreasonable unless:~~

~~A. the rates have been adjusted to account for the reduction in federal income tax expense computed under part 7827.0400;~~

~~B. the rates have been established pursuant to a general rate case decision rendered on or after January 1, 1987, that incorporates the new federal income tax rate in the determination of the revenue requirement;~~

~~C. the rates are interim rates subject to refund as part of a general rate case;~~

~~D. the public utility or telephone company is a party to a commission proceeding pending on January 1, 1987, or initiated between January 1, 1987, and July 1, 1987, in which the commission has ordered an investigation for the stated purpose of determining whether the public utility's or telephone company's rates should be reduced and has~~

~~directed, in the investigation, that the company file financial data that address the impact of the tax reform act; or~~

~~E. the rates have been established under a stipulated settlement and a commission decision approving the settlement. If a public utility or telephone company files with the commission before July 1, 1987, an agreement to make collections for its federal income tax expense subject to appropriate refund, the public utility or telephone company shall have an additional 90 days to obtain commission approval of the stipulated settlement.~~

~~Public utilities and telephone companies whose rates are found to be just and reasonable under item B, C, D, or E are exempt from the requirements of parts 7827.0400 to 7827.0600.~~

~~7827.0400 COMPUTATION.~~

~~The federal income tax expense adjustment amount must be computed and submitted to the commission as follows:~~

~~A. The public utility or telephone company shall compute current operating income based upon actual 1986 revenues and expenses, adjusted to include items that are the same in nature and kind as in the currently effective order in the utility's most recent rate proceeding, and normalized to the extent necessary to reflect normal operating conditions. Adjustments made to 1986 actual revenues and expenses must be separately identified and detailed.~~

~~B. Using the same method approved by the commission in the most recent rate proceeding, the public utility or telephone company shall compute income tax expense based upon the operating income determined in item A, in two ways as specified in subitems (1) and (2). The income tax expense must show the breakdown by component, including deferred taxes, net investment tax credits, and any other component applicable to an individual public utility or telephone company. The public utility or telephone company shall submit detailed schedules supporting the income tax expense computed under the following:~~

~~(1) using the tax rates and provisions in effect before enactment of the tax reform act; and~~

~~(2) using the tax rates effective July 1, 1987, containing a maximum tax rate of 34 percent and final provisions of the tax reform act.~~

~~C. The public utility or telephone company shall compute the difference between item B, subitems (1) and (2). The difference must be multiplied by the gross revenue conversion factor using the tax rates applied in item B, subitem (2). The calculation supporting the gross revenue conversion factor must be submitted to the commission.~~

~~7827.0500 ADJUSTMENTS OF TARIFFS, SCHEDULES.~~

~~Subpart 1. Adjustments; tariffs filed. The public utility or telephone company shall reduce its rates by the federal income tax expense adjustment amount calculated under part 7827.0400. The public utility or telephone company must file tariffs for service rendered on and after July 1, 1987, reflecting the reduced rates, in accordance with subparts 3, 4, and 5.~~

~~Subp. 2. Detailed supporting schedules submitted. The public utility or telephone company shall submit detailed schedules supporting the calculation of the reduced rates.~~

~~Subp. 3. Public utility charges reduced, allocated. A public utility shall reduce unit demand and unit energy charges uniformly across all rate schedules. The reduction must be allocated between demand and energy charges in proportion to 1986 normalized~~

~~demand and energy revenues.~~

~~Subp. 4. Telephone company local exchange rates. A telephone company providing local exchange service shall reduce the rates for local exchange access line services by a uniform percentage.~~

~~Subp. 5. Telephone company interexchange rates. A telephone company providing interexchange service shall reduce toll rates for message telecommunications services by a uniform percentage.~~

~~7827.0600 FILINGS; WRITTEN COMMENTS.~~

~~A tariff required under part 7827.0500 and documentation required under parts 7827.0400 and 7827.0500 must be filed with the commission, the department, and the Office of the Attorney General, Residential Utilities Division, by July 29, 1987.~~

~~Interested persons may submit written comments to the commission within 20 days from the date of filing.~~

Minn. Rules chapter 7827 provides transition rules occasioned by the federal Tax Reform Act of 1986. This chapter is now unnecessary because adjustments for the Tax Reform Act are now fully implemented.

R. 7829 Changes for Expired Statutes

~~7829.2200 TELEPHONE INCENTIVE PLAN FILING.~~

~~Subpart 1. Summary. A telephone utility filing an incentive plan under Minnesota Statutes, section 237.625, shall include, on a separate page, a brief summary of the filing, sufficient to apprise potentially interested parties of its nature and general content.~~

~~Subp. 2. Service. A utility filing an incentive plan under Minnesota Statutes, section 237.625, shall serve copies of the incentive plan filing on the department and the Residential Utilities Division of the Office of the Attorney General. The utility shall serve the filing or the summary described in subpart 1 on those persons on the applicable general service list and on persons who were parties to its last general rate case or incentive plan proceeding.~~

~~Subp. 3. Challenge to form and completeness. A person wishing to challenge the form or completeness of an incentive plan filing shall do so within ten days of its filing. The filing utility shall reply to the challenge within five days of its filing. These challenges and responses must be served on the utility, the department, the Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.~~

~~Subp. 4. Rejection of filing. The commission shall reject a filing that it finds to be substantially out of compliance with Minnesota Statutes, section 237.625, or with any other filing requirement imposed by rule or statute. An incentive plan filing not rejected within 45 days of filing is considered accepted as in substantial compliance with applicable filing requirements.~~

~~Subp. 5. Procedural comments. A person wishing to comment on a proposed incentive plan shall file comments within 20 days of its filing, recommending a specific procedural framework for examining the filing, including time frames for substantive comments and commission action. Procedural comments must be served on the utility, department, Residential Utilities Division of the Office of the Attorney General, persons on the general service list for the filing, and any other known parties.~~

~~Subp. 6. Petition to intervene. If a person desires full party status, but is not entitled to intervene in a commission proceeding as of right, the person shall file a petition to intervene before the procedural comment period expires. The intervention petition may be combined with procedural comments on the filing and must be served on those persons entitled to receive service of procedural comments.~~

~~Subp. 7. Notice to public and ratepayers. The utility shall give notice of the proposed incentive plan to its ratepayers and shall publish notice of the proposed plan in all newspapers of general circulation in all county seats in its service area.~~

~~Subp. 8. Notice of public meeting. The utility shall notify its ratepayers of public meetings on the proposed incentive plan scheduled by the commission and shall publish notice of the public meetings in all newspapers of general circulation in all county seats in its service area.~~

~~Subp. 9. Nature of proceeding. The commission shall deal with incentive plan filings by conducting an expedited proceeding under Minnesota Statutes, section 237.61. Following review of the procedural comments, the commission shall establish by order, time frames for submitting testimony and comments.~~

~~Subp. 10. Time frame for disposition. The commission shall approve, reject, or modify a proposed incentive plan within six months of filing. If the commission does not act within that time, the plan is considered withdrawn, unless the commission and the utility agree to extend the six-month period.~~

Minnesota Statute § 237.625 has expired, along with the Commission's authority for this rule.

S. 7849 Definitions Implementing Minnesota Statutes § 216B.2421

7849.0010 DEFINITIONS.

* * *

Subp. 13. LEGF; large electric generating facility. "Large electric generating facility" or "LEGF" means an electric power generating unit or combination of units as defined by Minnesota Statutes, section 216B.2421, subdivision 2, paragraph (a) clause (1).

Subp. 14. LHVTL; large high voltage transmission line. "Large high voltage transmission line" or "LHVTL" means a conductor of electrical energy as defined by Minnesota Statutes, section 216B.2421, subdivision 2, paragraph (b) clause (2), and associated facilities necessary for normal operation of the conductor, such as insulators, towers, substations, and terminals.

The Revisor changed the codification of Minnesota Statutes § 216B.2421, warranting a corresponding change to the citations in Minnesota Rules 7849.0010. As published in 1998 and before, Minn. Stat. § 216B.2421, subd. 2 had lettered clauses, e.g., (a), (b), (c), etc. As published

in 2000, this statute has numbered clauses, e.g., (1), (2), (3), etc.⁴ The changes proposed above would conform the citations in Minnesota Rules part 7849.0010 to the new codification.

T. 7851 Reference to Chapter 7847

7851.0200 APPLICATION PROCEDURES AND TIMING.

* * *

Subp. 5. Hearing. An administrative law judge shall be assigned, and a public hearing shall be scheduled to commence, no later than 80 days after the receipt of the application, in accordance with rules of procedure governing certificate of need ~~program,~~ ~~parts 7847.0010 to 7847.0320 filings, part 7829.2500,~~ and the Office of Administrative Hearings' rules for contested cases, ~~parts 1400.5200 to 1400.8500~~ chapter 1400.

The Commission repealed Minn. Rules chapter 7847 (Large Energy Facilities), but this rule retains a references to that chapter. The change proposed above would eliminate that reference, and substitute a more appropriate one. In addition, changes to the rules of the Office of Administrative Hearings (OAH) rendered the Commission's citations to their rule parts inaccurate; this problem can be avoided in the future by simply citing to the OAH's chapter of rules, 1400. A final proposed revision to part 7851.0200, subp. 5 would replace the reference to "A administrative law judge" with "An administrative law judge."

U. 7853 Large Oil Facilities and Oil Refineries, and Reference to Chapter 7847

7853.0010 DEFINITIONS.

* * *

~~*Subp. 13. Large oil storage facility. "Large oil storage facility" means a facility on a single site designed for or capable of storing more than 1,000,000 gallons of crude petroleum or petroleum fuels or oil or their derivatives.*~~

7853.0030 SCOPE OF RULES.

Each petroleum supplier applying for a certificate of need for one of the following types of large energy facilities shall provide all information required by this chapter:

- A. a new large ~~oil or~~ LPG storage facility;*
- B. a new large petroleum pipeline facility;*
- C. ~~a new oil refinery;~~*
- ~~D.~~ any project that, within a period of one year, would expand the LPG storage capacity of an existing LPG storage facility in excess of either 20 percent of capacity of 100,000 gallons, whichever is greater; and*
- ~~E. any project that, within a period of one year, would expand the oil storage capacity of an existing oil storage facility in excess of either 20 percent of capacity or 1,000,000 gallons, whichever is greater;~~*

⁴Minnesota Statutes § 3C.10 gives the Revisor the authority to make such editorial changes. The Commission understands that this change was intended to conform the statute's codification to the Revisor's style manual. Specifically, within a subpart the manual uses letters to denote full sentences and paragraphs, and uses numbers to denote clauses less than a full sentence.

~~F. D. any project that, within a period of two years, would expand an existing large petroleum pipeline in excess of either 20 percent of its rated capacity or 10,000 barrels per day, whichever is greater; and~~

~~G. any project that, within a period of four years, would expand an existing oil refinery in excess of either 20 percent of its rated throughput or 10,000 barrels per day, whichever is greater.~~

Exception: any person who as of the effective date of this chapter has begun or has completed construction of a large energy facility ~~shall is not be~~ subject to this chapter for that facility.

7853.0200 APPLICATION PROCEDURES AND TIMING.

* * *

Subp. 5. Hearing. An administrative law judge shall be assigned, and a public hearing shall be scheduled to commence, no later than 80 days after the receipt of the application, in accordance with the rules of procedure governing certificate of need ~~program, chapter 7847 filings, part 7829.2500, and the office of administrative hearings' rules of contested case procedures, parts 1400.5100 to 1400.8500 chapter 1400.~~

7853.0210 FILING FEES AND PAYMENT SCHEDULE.

Subpart 1. Fees. The fee for processing an application shall be:

A. \$2,000 plus \$10 per 100,000 gallons of design storage capacity for a large ~~oil or~~ LPG storage facility; ~~or~~

B. \$5,000 plus \$1 for each mbpd-mile for a large petroleum pipeline;

~~C. \$10,000 plus \$200 per thousand barrels of design daily throughput for a new oil refinery; or~~

~~D. \$5,000 plus \$100 per thousand barrels of additional daily throughput for an expansion of an existing oil refinery;~~ plus such additional fees as are reasonably necessary for completion of the evaluation of need for the proposed facility.

In no event shall the total fee required of any applicant exceed \$50,000.

7853.0220 CONTENTS OF APPLICATION.

* * *

Subp. 4. Additional information. Additional information shall be provided for specific types of facilities as indicated:

A. large ~~oil or~~ LPG storage facility: refer to part 7853.0300; ~~and~~

B. large petroleum pipeline facility: refer to part 7853.0500; ~~and~~

~~C. oil refinery: refer to part 7853.0700.~~

7853.0230 GENERAL INFORMATION SECTION.

Subpart 1. Content of section. Each application shall contain a general information section that shall include the following information:

* * *

D. a brief description of the proposed facility, its complete address (if known) or general location, a brief description of its planned use, its estimated cost, its planned in service date, and its design capacity in gallons (~~oil or~~ LPG storage); ~~or~~ its maximum design throughput in barrels per day and its size in Mbpd-miles (petroleum pipeline); ~~or its design throughput in barrels per day (oil refinery);~~

* * *

7853.0300 LARGE ~~OIL OR~~ LPG STORAGE FACILITY ~~SECTION~~.

In addition to the data required by parts 7853.0230 to 7853.0260, each applicant for a large ~~oil or~~ LPG storage facility shall provide the information required by parts 7853.0310 to 7853.0450, and optionally, part 7853.0270.

In a joint application, separate responses are required from each person for information required under parts 7853.0310, 7853.0320, and 7853.0340.

7853.0310 HISTORICAL ENERGY DATA.

Each applicant for a large ~~oil or~~ LPG storage facility shall provide the following information:

A. the end of year total storage capacity at the site where the proposed facility will be located for each of the five years preceding the year of application;

B. identification of the specific facilities in item A that are normally used to store the type of petroleum products that would be stored in the proposed facility; and

C. for the site where the proposed facility would be located, a list of the annual throughput in gallons for the five most recent calendar years for the type of petroleum products that would be stored in the proposed facility.

7853.0320 FORECAST DATA.

Each applicant for a large ~~oil or~~ LPG storage facility shall provide answers to the questions below, unless previously submitted to the agency pursuant to chapter 7610, in which case a copy of such submission may be incorporated into the application to satisfy the requirements of this rule....

7853.0330 DESCRIPTION OF PROPOSED FACILITY.

Each application for a large ~~oil or~~ LPG storage facility ~~shall~~ must include the following information....

7853.0340 ALTERNATIVES.

Each applicant for a large ~~oil or~~ LPG storage facility shall respond to the following questions....

7853.0400 INFORMATION REQUIRED.

When a certificate of need application is submitted ~~for a large oil storage facility on an existing oil storage site, which site already has storage capacity of at least 1,000,000 gallons, or~~ for a large LPG storage facility on an existing LPG storage site, which site already has storage capacity of at least 100,000 gallons, a copy of an environmental assessment worksheet (EAW) may be submitted in lieu of specific answers to the requirements in parts 7853.0420 to 7853.0450. If permits for construction of the facility are required by other state agencies, a copy of each permit application, or the informational equivalent, shall also be submitted.

In all other cases, the applicant for a certificate of need for a large ~~oil or~~ LPG storage facility shall provide environmental information for the proposed facility and for each alternative facility discussed in response to part 7853.0340. ~~Such~~ The applicant shall provide the information ~~shall be provided~~ in the format given in parts 7853.0420 to 7853.0450 to the extent that ~~such the~~ data is applicable and reasonably available.

7853.0440 POLLUTION CONTROL AND SAFEGUARDS EQUIPMENT.

* * *

Subp. 3. ~~Oil spill Leak~~, fire, and explosion safeguards. Describe measures that would be taken to prevent ~~oil spills leaks~~, fires, and explosions or to minimize the environmental impact of a ~~spill leak~~, a fire, or an explosion.

~~7853.0700 OIL REFINERY FACILITY SECTION.~~

~~In addition to the data required by parts 7853.0230 to 7853.0260, each applicant for a certificate of need for an oil refinery facility shall provide the information required by parts 7853.0710 to 7853.0790.~~

~~In a joint application, separate responses are required from each person for information required by parts 7853.0710, 7853.0720, and 7853.0740.~~

~~7853.0710 HISTORICAL ENERGY DATA.~~

~~Subpart 1. Required information. For the geographical area to be served by the proposed facility, the applicant shall provide the following:~~

~~A. a list of the petroleum products by major categories (such as crude oil, gasoline, fuel oil, and so forth) associated with the refining process, or, if not associated with the refining process, distributed by the applicant in that geographical area during the five most recent calendar years;~~

~~B. for each category listed in response to item A and for each of the five most recent calendar years, a list of the annual quantities refined or distributed in the appropriate unit of measure; and~~

~~C. for each category listed in response to item A and for each of the five most recent calendar years, the percentage delivered within Minnesota.~~

~~Subp. 2. Facilities, maps. List each large oil or LPG storage facility location, large pipeline facility, and oil refinery associated with the refining or distribution of the categories named in response to subpart 1, item A. Provide maps that represent the locations and interconnections of these facilities.~~

~~Subp. 3. Use of design capacity. For each storage facility location, pipeline, and refinery described in response to subpart 2, located in Minnesota and owned or operated by the applicant, provide the average percentage (or, where applicable, the maximum percentage) of use of its full design capacity during the summer season and during the winter season.~~

~~7853.0720 FORECAST DATA.~~

~~Each applicant for an oil refinery facility shall provide forecast data in the format given below, unless such data has been previously submitted to the agency pursuant to chapter 7610, in which case a copy of such submission may be incorporated into the application to satisfy the requirements of this part. For the geographical area to be served by the proposed facility, the applicant shall provide the following:~~

~~A. a list of the categories of petroleum products the applicant expects to refine or distribute in that geographical area during the first six forecast years, the 11th forecast year (the tenth year after the year of the application), and the 16th forecast year;~~

~~B. for each category listed in response to item A and for each of the first six forecast years, the 11th forecast year, and the 16th forecast year, a list of the annual quantities expected, using the appropriate units of measure;~~

~~C. a discussion of the methods, assumptions, and factors employed for purposes of estimation in response to items A and B;~~

~~D. a discussion of the effect on the forecast of possible changes in the key assumptions and key factors requested in item C; and~~

~~E. considering the forecast, a discussion of other facilities, if any, planned by the applicant to supply the forecast demand.~~

~~7853.0730 DESCRIPTION OF PROPOSED FACILITY.~~

~~Subpart 1. Design. The applicant shall provide the following information pertaining to the design of the proposed oil refinery or refinery expansion:~~

~~A. if known, the complete name and address of the engineer and firm to be responsible for the design;~~

~~B. the estimated cost and economic life;~~

~~C. a list of the crude oils (or equivalent) the oil refinery is intended to process, identifying each crude oil by general type, and a list of each refined petroleum end product intended;~~

~~D. for each petroleum product listed in response to part 7853.0710, subpart 1, item C, the design capacity in barrels per day;~~

~~E. a simplified flow diagram of the refinery showing major products and process components; and~~

~~F. a map showing the likely locations for the proposed facility and its interconnections with major pipeline facilities.~~

~~Subp. 2. Construction. The applicant shall provide the following information pertaining to the construction of the proposed facility:~~

~~A. if known, the complete name and address of the company to be responsible for the construction;~~

~~B. the proposed date for commencement of construction and the proposed in-service date; and~~

~~C. an estimate of the in-service date if the construction were to be on a fully expedited basis.~~

~~Subp. 3. Operation. The applicant shall provide the following information pertaining to the operation of the proposed facility:~~

~~A. the expected average percentage of use of the full design capacity of the proposed facility during the first five years of operation; and~~

~~B. for each of the first five calendar years of operation, the percentage of each refined petroleum end product expected to be delivered in-state.~~

~~7853.0740 ALTERNATIVES.~~

~~The applicant shall provide information pertaining to the alternatives that have been considered, and the information shall be presented in the following format:~~

~~A. a description of the alternative, including:~~

~~(1) a discussion of the design and the geographical area affected;~~

~~(2) an estimate of the in-service date;~~

~~(3) a discussion of the method of operation;~~

~~(4) its cost;~~

~~(5) its economic life; and~~

~~(6) its reliability; and~~

~~B. a summary of the conclusions reached with respect to the alternative and the reasons for its rejection.~~

~~7853.0750 ENVIRONMENTAL INFORMATION REQUIRED:~~

~~Each applicant shall provide environmental data for the proposed facility and for each alternative facility described in response to part 7853.0740. Information relating to construction and operation of each of these facilities shall be provided as indicated in parts 7853.0760 to 7853.0790, to the extent that such information is reasonably available to the applicant and applicable to the particular alternative.~~

~~7853.0760 LOCATION:~~

~~Subpart 1. Land description. If the specific location for the proposed (or alternative) facility is known, provide the county, township, range, and sections of that site. If a specific location has not been chosen, provide the county, township, range, and sections for each parcel of land that, in the opinion of the applicant, could serve as the site for the facility.~~

~~Subp. 2. Description of environment. For each site identified in response to subpart 1, list:~~

~~A. the nature of the terrain at the site;~~
~~B. the general soil type at the site;~~
~~C. the depth to groundwater at the site;~~
~~D. the types of vegetation (including forest, brush, marsh, pasture, and cropland) on the site;~~

~~E. the predominant types of land use (such as residential, forest, agricultural, commercial, and industrial) within five miles of the site;~~

~~F. trunk highways, railroads, and airports within one mile of the site;~~

~~G. lakes, streams, wetlands, or drainage ditches within five miles of the site, and any other lakes, streams, wetlands, drainage ditches, wells, or storm drains into which liquid contaminants could flow;~~

~~H. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails, and national waterfowl production areas within five miles of the site, as mapped on the inventory of significant resources by the State Planning Agency;~~

~~I. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic, and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes within five miles of the site, as mapped on the inventory of significant resources by the State Planning Agency; and~~

~~J. national historic sites and landmarks, national monuments, national register historic districts, registered state historic or archaeological sites, state historical districts, sites listed on the National Register of Historic Places, and any other cultural resources within five miles of the site, as indicated by the Minnesota Historical Society.~~

~~7853.0770 SOLID WASTE, WASTEWATER, AIR EMISSIONS, NOISE SOURCES:~~

~~Subpart 1. Solid wastes. Indicate the types and estimated quantities of solid wastes that would be produced by or because of the facility. Also indicate the intended method of recycling or disposing of these wastes.~~

~~Subp. 2. Point discharges to water. Indicate the location, route, and final receiving waters for any discharge points. For each discharge point indicate the source, the amount, and the nature of the discharge (provide quantitative data if possible).~~

~~Subp. 3. Area runoff. Indicate the area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff.~~

~~Subp. 4. Point sources of airborne emissions. Estimate the quantity of gaseous and particulate emissions that would occur during full operation from each emission source, and indicate the location and nature of the release point.~~

~~Subp. 5. Area sources of airborne emissions. Indicate locations that may be sources of fugitive dust and indicate the nature of the source (including type of material, amount, and turnover rate).~~

~~Subp. 6. Noise. Indicate the maximum noise levels (in decibels, A scale) expected at the property boundary. Also, indicate the expected maximum increase over ambient noise levels.~~

~~7853.0780 POLLUTION CONTROL AND SAFEGUARDS EQUIPMENT.~~

~~Subpart 1. Air pollution controls. Indicate types of emission control devices and dust control measures that would be used.~~

~~Subp. 2. Water pollution controls. Indicate types of water pollution control equipment and runoff control measures that would be used to comply with applicable state and federal rules, regulations, and statutes.~~

~~Subp. 3. Oil spill safeguards. Describe measures that would be taken to prevent oil spills or to minimize the environmental impact of a spill on surface waters and groundwaters of the state.~~

~~Subp. 4. Other safeguards and controls. Indicate any other equipment or measures, including erosion control, that would be used to reduce impact of the facility. Indicate the types of environmental monitoring, if any, that are planned for the facility, and describe relevant environmental monitoring data already collected.~~

~~7853.0790 INDUCED DEVELOPMENTS.~~

~~Subpart 1. Vehicular traffic. Estimate the amounts and types of vehicular traffic that would be generated by the facility due to construction activity and, later, operational needs.~~

~~Subp. 2. Utility use. Indicate the extent to which the facility would create or add to the need for expanded utilities or public services.~~

~~Subp. 3. Water use. Indicate the amount of water that would be appropriated and the amount that would be consumed by the facility, the expected source of the water, and how the water would be used.~~

~~Subp. 4. Agriculture. Estimate the amount of agricultural land, including pasture land, that would be removed from agricultural use if the facility were constructed. Indicate known circumstances with regard to the facility that could lead to reduced productivity of surrounding agricultural land.~~

~~Subp. 5. Relocation of persons. Estimate the number of people that would have to relocate if the facility were constructed.~~

Initially Minnesota Statutes § 216B.2421, subd. 2 defined "large energy facility" to include –

(c) Any facility on a single site designated for or capable of storing more than one million gallons of crude petroleum or petroleum fuels or oil or their derivatives [and]

* * *

(j) Any petroleum refinery....

But in 1982 the Legislature eliminated this language, removing oil facilities and oil refineries from the Commission's jurisdiction. *See* Laws 1982, ch. 561, § 1. The changes proposed above would eliminate references to "oil facilities" and "oil refineries," and make conforming changes.

Also, the Commission repealed Minn. Rules chapter 7847 (Large Energy Facilities), but part 7853.0200 retains a references to that chapter. The change proposed above would eliminate that reference, and substitute a more appropriate one. In addition, changes to the rules of the Office of Administrative Hearings (OAH) rendered the Commission's citations to their rule parts inaccurate; this problem can be avoided in the future by simply citing to the OAH's chapter of rules, 1400.

Finally, the Revisor proposed other changes to simplify the rule's language and conform it to the Revisor's contemporary drafting style. These changes are not designed to have any substantive effect.

IV. 7855 Reference to Chapter 7847

7855.0200 APPLICATION PROCEDURES AND TIMING.

* * *

Subp. 5. Hearing. An administrative law judge shall be assigned, and a public hearing shall be scheduled to commence, no later than 80 days after the receipt of the application, in accordance with rules governing certificate of need ~~program, chapter 7847 filings, part 7829.2500,~~ and the Office of Administrative Hearings rules for contested case procedures, ~~parts 1400.5100 to 1400.8500~~ chapter 1400.

The Commission repealed Minn. Rules chapter 7847 (Large Energy Facilities), but this rule retains a references to that chapter. The change proposed above would eliminate that reference, and substitute a more appropriate one. In addition, changes to the rules of the Office of Administrative Hearings (OAH) rendered the Commission's citations to their rule parts inaccurate; this problem can be avoided in the future by simply citing to the OAH's chapter of rules, 1400.

V. REGULATORY ANALYSIS

The legislature directs an agency proposing rules to address certain matters in its Statement of Need and Reasonableness (SONAR). Minn. Stat. § 14.131. These matters, and the Commission's responses, are set forth below:

(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The Commission anticipates that these changes will have no substantive effect. At most, they remove misleading language by conforming Commission rules to superceding laws. These changes, by reducing the sheer volume of rules, may have the incidental effect of simplifying review of the remaining rules.

(2) the probable cost to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues

An appendix to the June 22, 2001, edition of the *Minnesota Rulemaking Manual* (David Orren, editor/compiler) estimates the one-time cost to promulgate a “Small Rule” at \$27,520.⁵

This rulemaking, by reducing the sheer volume of rules, may also permit the Revisor of Statutes to avoid some printing costs.

The Commission does not anticipate that these rules would have any appreciable effect on state revenues.

(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule

The Commission knows of no less costly or less intrusive methods for complying with its obligations under Minnesota Statutes § 14.05, subd. 5. This matter is discussed further below.

(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule

The Commission is aware of two other means for repealing rules. The first involves legislative action. Because many of the changes are intricate, requiring substitution of new language or old, or the insertion of conforming changes, the use of a legislative change was deemed inappropriate.

The second means for repealing rules is the new statutory provision created by Laws 2001, chapter 179, § 9. This mechanism permits an agency to repeal rules without issuing a Request for Comments or a Statement of Need and Reasonableness (SONAR). However, this new mechanism has not been tested yet, and it is unclear whether it can also be used to make conforming changes and introduce substitute language in place of repealed language. Moreover, the Commission had already published its Request for Comments before the new statute took effect. Additionally, the Commission had prepared a SONAR-like briefing paper in preparation for its public meetings on this matter; the Commission must act through public meetings pursuant to Minnesota’s Open Meetings Law, Minnesota Statutes § 471.705.

Given these circumstances, the Commission has elected to proceed under the standard rulemaking procedures of Minnesota’s Administrative Procedure Act, Minnesota Statutes chapter 14.

⁵The manual may be found on the World Wide Web at

<http://www.health.state.mn.us/divs/hpsc/dap/rmanform.htm>

The cost estimate appears in file COST-INF.EXE.

(5) the probable costs of complying with the proposed rule

The Commission estimates no additional cost to complying with the proposed rule changes.

(6) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference

This rulemaking is designed to eliminate rule language that is ineffective. Removing obsolete provisions from the Commission's rules does not conflict with any federal regulation.

VI. PERFORMANCE-BASED REGULATION

The legislature directs an agency proposing rules to state in the SONAR how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory schemes set forth at Minnesota Statutes § 14.002. Minnesota Statutes § 14.131. Section 14.002 states:

The legislature recognizes the important and sensitive role for administrative rules in implementing policies and programs created by the legislature. However, the legislature finds that some regulatory rules and programs have become overly prescriptive and inflexible, thereby increasing costs to the state, local governments, and the regulated community and decreasing the effectiveness of the regulatory program. Therefore, whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

The Commission acknowledges that the legislature disfavors “overly prescriptive and inflexible rules” which needlessly constrain flexibility. Where a rule must be adopted, the Commission acknowledges its duty to draft rules that emphasizes “superior achievement,” where feasible. But where a rule is unnecessary, maximum flexibility can be achieved by repealing it. This rulemaking honors the spirit of this requirement.

VII. ADDITIONAL NOTIFICATION

The Commission plans to publish the proposed rules in the *State Register*, and to mail a copy of the proposed rules and the accompanying notice to the list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings pursuant to Minn. Stat. § 14.14, subd. 1a. The Commission also plans to publicize the rulemaking in a press release, in its *Weekly Calendar* publication, and on its internet World Wide Web site at --

<http://www.puc.state.mn.us>

In addition, the Commission plans to mail the proposed rules and notice to --

- all persons who asked to receive notice of only telephone-related matters,
- all persons who asked to receive notice of only energy-related matters, and
- all persons who asked to receive notice of matters in this specific rulemaking.

These lists are updated regularly.

VIII. CONCLUSION

For the foregoing reasons, the Commission concludes that the proposed rules are needed and reasonable. The Commission offers this document in fulfillment of its obligations pursuant to Minnesota Statutes §§ 14.131 and 14.23, and Minn. Rules part 1400.2070.

Burl W. Haar, Executive Secretary

(S E A L)

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